IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2168 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULABSING SARDARSING THAKORE

Versus

POPATLAL CHHOTALAL JADAWALA

Appearance:

MR PV NANAVATI for Petitioner

MR SR DIVETIA for Respondent No. 1

MR KV SHELAT for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/03/2000

ORAL JUDGEMENT

1. The petitioner is the original defendant against whom the respondent had filed the suit being H.R.P.Suit No.17/75 in the Small Causes Court, Ahmedabad. The case

of the landlord in the said suit was that, he is the owner of the suit premises which is situated at Mirzapur Road, Ahmedabad. That the defendant No.2 is carrying his tailoring business in the name of the defendant No.1. That premises in question was hired by the defendant No.2 which is one room on the second floor of the suit building with the monthly rent of Rs.200/- and taxes to be paid by the tenant. According to the plaintiff, the defendant was in arrears of rent from 1.3.1974 and he has not paid the same inspite of the demand. He has also stated in the plaint that the tenant has changed the use of the premises and that the conduct of the defendant amounts to nuisance. Therefore, the suit was filed on the aforesaid grounds with the prayer for getting the decree for possession.

2. The defendant appeared in the suit by filing the written statement at Exh.11. It was alleged that, contractual rent of Rs.200/- is excessive. It was also stated by the defendant that, he was ready and willing to pay the rent and other grounds were also denied by him, that is, change of user and nuisance.

3. The learned trial Judge framed various issues at Exh.53 and thereafter, after recording the evidence of the parties came to the conclusion that the tenant was in arrears of rent and the standard rent of the suit premises was Rs.500/- per month, plus taxes. Ultimately, on the ground of arrears of rent, the trial court passed the decree under section 12(3)(b) of the Bombay Rent Act. The aforesaid decree of the trial court was challenged by the tenant before the Appellate Bench of the Small Causes Court, Ahmedabad by way of Civil Appeal No.150/79. The Appellate Bench by its order dated 2.11.1982 dismissed the said appeal and confirmed the decree of the trial court. The present revision application has been filed by the defendant against the order of the Appellate Bench by which his appeal was dismissed.

4. At the time of hearing of this revision application, it was argued by Mr.P.V.Nanavati, learned advocate for the petitioner that, looking to the facts and circumstances of the case, it cannot be said that the tenant is not ready and willing to pay the rent. It was argued by him that the defendant had already deposited Rs.900/- with the landlord at the time of executing the rent note, and therefore, the aforesaid amount is required to be adjusted towards the arrears of rent, if, that amount amount is to be considered, then the tenant was not in arrears of rent.

5. It was next argued by him that, even though the tenant had paid the taxes in the past, the landlord had not remitted the same to the local authority, and therefore, there was no question on his part to pay regularly the amount of taxes during the pendency of the suit and the appeal.

6. It was further argued that the tenant had taken the dispute of standard rent in the written statement, and therefore, the court should have fixed an appropriate standard rent.

7. It was lastly argued that the amount of taxes was not claimed in the suit by the plaintiff, and therefore, it was not necessary for him to deposit the amount of taxes regularly, and therefore, what is required to be considered is whether the amount of rent was regularly deposited before the court below or not.

8. So far as the first point regarding adjustment of deposit of Rs.900/- is concerned, the said deposit as per the agreement was required to be returned back at the time of handing over the possession. The question which requires consideration is, whether the aforesaid amount of Rs.900/- which the tenant had paid to the landlord towards the deposit can be adjusted towards the arrears of rent or not. If, the aforesaid amount of Rs.900/- is considered towards arrears, then naturally, so far as the amount of rent is concerned at the rate of Rs.200/- per month, it can be said that, on the date of filing of the suit, the tenant can be said to have cleared off these dues.

9. Mr.K.V.Shelat, learned advocate for the respondent No.2 on the other hand argued that, so far as the amount of deposit is concerned, the tenant is entitled to recover the said amount back as provided by Section 18 of the Bombay Rent act. Reference is required to be made to Section 18 (1) and (2) of the Act at this stage which reads as under.:

> "Unlawful charges by landlord.- (1) If any landlord either himself or through any person acting or purporting to act on his behalf or if any person acting or purporting to act on behalf of the landlord receives any fine, premium or other like sum or deposit or any consideration other than the standard rent or the permitted increases, in respect of the grant, renewal or continuance of a lease of any premises, or for

giving his consent to the transfer of a lease by sub-lease or otherwise, such landlord or person shall, on conviction, be punished with imprisonment for a term which may extend to six months and shall also be punished with fine which shall not be less than the amount of the fine, premium or sum or deposit or the value of the consideration received by him, and further where the offence is committed by a landlord in respect of premises which were of his ownership on the date of the offence such premises shall be liable to confiscation.

(2) When any fine, premium or other like sum or deposit or any consideration referred to in sub-section (1) is paid by any person, the amount or value thereof shall be recoverable by him from the landlord to whom it was paid or on whose behalf it was received or from his legal representative at any time within a period of six months from the date of payment and may, if such person is a tenant, without prejudice to any other remedy for recovery, be deducted by him from any rent payable by him to such landlord."

According to Mr.Shelat, it is open for the tenant to recover the amount of deposit or any other consideration which the tenant has paid to the landlord within a period of six months or he may effect the recovery by way of deducting the same from the rent payable by him to such landlord. Reference to Section 20 is also required to be made at this stage which provides as under.:

"Recovery of amounts paid not in accordance with Act.- Any amount paid on account of rent after the date of the coming into operation of this Act shall, except in so far as payment thereof is in accordance with the provisions of this Act, be recoverable by the tenant from the landlord to whom it was paid or on whose behalf it was received or from his legal representative at any time within a period of six months from the date of payment and may, without prejudice to any other remedy for recovery, be deducted by such tenant from any rent payable by him to such landlord."

Mr.Shelat has relied upon the judgment reported in AIR 1969 SC 37 in the case of Maganlal Chhotabhai Desai Vs.

Chandrakant Motilal. The Supreme Court has considered the provisions of Section 20 of the Bombay Rent Act. It is stated that, Section 20 gives the tenant a general right of recovery of overpaid rent within six months from the date of payment. Without prejudice to any other mode of recovery, he may deduct overpayment from any rent payable by him to the landlord. Deduction is one mode of recovery. If, the amount is incapable of recovery because of the bar of limitation, it cannot be recovered by deduction. In other words, the right of recovery by deduction is barred at the same time as the right of recovery by suit. If, the tenant seeks recovery of the overpaid amount, he must bring the suit or make the deduction within six months. It is not in dispute that, within six months of the aforesaid deposit, the tenant has not tried to exercise his right as contemplated under section 18 of the Bombay Rent Act by effecting the recovery within a period of six months. The deposit is made at the time of executing the rent note, that is, on 20/9/1971. Within six months from the same, the tenant could have tried to recover the said amount or could have deducted the amount from the arrears of rent within the aforesaid time limit. It is not in dispute that, the defendant has not done anything in this behalf within the aforesaid period of six months after depositing Rs.900/with the landlord in September, 1971. In that view of the matter, it is not open for the defendant to ask for the adjustment of nonpayment of rent for getting the benefit of Section 12(1) of the Bombay Rent Act. In response to the notice of demand, he had paid only one month rent and on the date of filing the suit, he was in arrears of rent because after sending one month rent in response to the suit notice, he had not paid any rent till the suit was filed. Since the tenant was in arrears of rent for less than six months at the time of notice, the provisions of Section 12(3)(b) of the Bombay Rent Act are applicable to the facts of the present case. Learned Appellate Bench in paragraph 14 of its judgment has considered as to how the tenant has not paid the arrears of rent and as to how he was in arrears of rent. It is found in the said paragraph that, the defendant had deposited Rs.945/- short than what he had to actually deposited in the court.

10. So far as the argument about the non-payment of taxes by the landlord is concerned, I do not find any substance in the said argument because the tenant was to pay Rs.200/- towards the rent and Rs.100/- towards the taxes subject to the final adjustment of the taxes at the time of receiving the bill from the local authority. The landlord has clearly stated in the plaint that, since the

question about total amount payable to the local authority was not finalised, and therefore, he had demanded the amount of taxes at the rate of Rs.100/- over and above the rent of Rs.200/-. The amount of taxes was finally adjusted between the parties. Therefore, in response to the demand notice as well as during the pendency of the proceedings, the tenant was required to pay the amount of Rs.200/- towards the rent and Rs.100/towards the taxes. Therefore, it cannot be said that, as the landlord has not paid the taxes to the authority and since he had not demanded in the plaint, it is not obligatory on the part of the tenant to go and deposit the amount of rent as well as taxes in the court. Subsequenty, the landlord had demanded the taxes in the suit after having paid the amount to the local authority. I, therefore, do not agree with the submission of the learned advocate Mr.Nanavati that what was required to be paid by the tenant was only Rs.200/- which is contractual rent amount and not the amount of taxes. In view of this specific agreement between the parties for the payment of taxes, the tenant was duty bound to pay the same, and therefore, I negative the contention of Mr.Nanavati about the nonpayment of taxes by the landlord to the local authority or not demanding the taxes in the plaint.

11. In that view of the matter and as per the facts of the case, it is clear that, the tenant had not remitted the entire arrears of rent and permitted increases in response to the demand notice under section 12(2) of the Bombay Rent Act and during the pendency of the proceedings also, there was no regular deposit as contemplated in section 12(3)(b) of the Bombay Rent Act. The trial court had also passed the order below Exh.15 in the suit by which the defendant was asked to deposit the amount of Rs.2900/- by 2.11.1976. It is found by the appellate court in paragraph 16 of its order that the tenant had not paid the said amount on due date and even thereafter the defendant could have deposited the amount after dismissal of civil revision application as the said revision application was dismissed by the Appellate Bench on 2.3.1977. The defendant did not deposit any amount in pursuance of the order passed below Exh.15 even after the dismissal of the civil revision application by the appellate court, nor he had given any application for extension of time for such payment. It has also been found that, during the pendency of the proceedings in the trial court, there was also no regular deposit. In that view of the matter, since there is no regular deposit every month by the tenant, the decree under section 12(3)(b) is required to be confirmed.

12. So far as the argument about the standard rent is concerned, it is found by the Appellate Bench that, earlier by settlement between the parties, the standard rent was already fixed, and the tenant has not led any evidence to show that, as to how the amount of Rs.200/is not the standard rent, nor he has led any evidence to show that, Rs.200/- is an excessive rent. It was found that, the dispute of standard rent was not genuine and bonafide. Therefore, it cannot be said that, the said finding in any way is illegal or contrary to the evidence on record.

13. In view of what is stated above, I do not find any substance in the arguments of Mr.Nanavati. Civil Revision Application is required to be dismissed and accordingly the same is dismissed. Rule is discharged. There shall be no order as to costs.

14. Mr.Nanavati at this stage requests that, as the petitioner is doing tailoring business since many years and has acquired good will in the area, so he has prayed that, he may be given three years time to vacate the suit premises, so that, in the meanwhile, he can find out another alternative accommodation. Mr.Shelat has no objection, if reasonable time is given for vacating the suit premises.

15. In the facts and circumstances of the case, I direct that the decree possession may not be executed till 30.6.2002. The aforesaid time is given on condition that the petitioner should file usual undertaking before this court within six weeks from today. In the said undertaking, the petitioner should clearly mention that, he is in exclusive possession of the suit premises and that without obstruction in any manner he will hand over the vacant and peaceful possession to the respondent on or before the aforesaid date. The petitioner should also pay the means profit regularly till the possession of the suit premises is handed over to the respondent. If, the aforesaid undertaking is not filed within a period of six weeks or subsequently, if there is any breach of the said undertaking, it will be open for the respondent to execute the decree for possession forthwith.

(P.B.Majmudar,J.)

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